

**AMENDMENT IN THE NATURE OF A SUBSTITUTE**  
**TO H.R. 3763, AS REPORTED**  
**OFFERED BY MR. LAFALCE OF NEW YORK**

Strike all after the enacting clause and insert the  
following:

**1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

**2 (a) SHORT TITLE.**—This Act may be cited as the  
**3 “Corporate and Auditing Accountability, Responsibility,**  
**4 and Transparency Act of 2002”.**

**5 (b) TABLE OF CONTENTS.**—

- Sec. 1. Short title; table of contents.
- Sec. 2. Auditor oversight.
- Sec. 3. Improper influence on conduct of audits.
- Sec. 4. Real-time disclosure of financial information.
- Sec. 5. Insider trades during pension fund blackout periods prohibited.
- Sec. 6. Improved transparency of corporate disclosures.
- Sec. 7. Improvements in reporting on insider transactions and relationships.
- Sec. 8. Enhanced oversight of periodic disclosures by issuers.
- Sec. 9. Retention of records.
- Sec. 10. Removal of unfit corporate officers.
- Sec. 11. Disgorgement required.
- Sec. 12. CEO and CFO accountability for disclosure.
- Sec. 13. Securities and Exchange Commission authority to provide relief.
- Sec. 14. Authorization of appropriations of the Securities and Exchange Commission.
- Sec. 15. Analyst conflicts of interest.
- Sec. 16. Independent directors.
- Sec. 17. Enforcement of audit committee governance practices.
- Sec. 18. Review of corporate governance practices.
- Sec. 19. Study of enforcement actions.
- Sec. 20. Study of credit rating agencies.
- Sec. 21. Study of investment banks
- Sec. 22. Study of model rules for attorneys of issuers.
- Sec. 23. Enforcement authority.
- Sec. 24. Exclusion for investment companies.
- Sec. 25. Definitions.



1 **SEC. 2. AUDITOR OVERSIGHT.**

2 (a) CERTIFIED FINANCIAL STATEMENT REQUIRE-  
3 MENTS.—If a financial statement is required by the secu-  
4 rities laws or any rule or regulation thereunder to be cer-  
5 tified by an independent public or certified accountant, an  
6 accountant shall not be considered to be qualified to cer-  
7 tify such financial statement, and the Securities and Ex-  
8 change Commission shall not accept a financial statement  
9 certified by an accountant, unless such accountant—

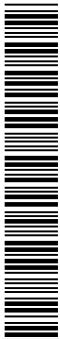
10 (1) is subject to a system of review by a public  
11 regulatory organization that complies with the re-  
12 quirements of this section and the rules prescribed  
13 by the Commission under this section; and

14 (2) has not been determined in the most recent  
15 review completed under such system to be not quali-  
16 fied to certify such a statement.

17 (b) ESTABLISHMENT OF PRO.—

18 (1) ESTABLISHMENT REQUIRED.—Not later  
19 than 90 days after the date of enactment of this sec-  
20 tion, the Commission shall establish a public regu-  
21 latory organization to perform the duties set forth in  
22 this section.

23 (2) CHAIRMAN.—The Chairman of the public  
24 regulatory organization shall be appointed by the  
25 Commission for a term of 5 years.



1           (3) APPOINTMENT OF PUBLIC REGULATORY OR-  
2           GANIZATION MEMBERS.—There shall be 6 additional  
3           public regulatory organization members, who shall  
4           be selected jointly by the Chairman of the public  
5           regulatory organization and the Chairman of the  
6           Commission.

7           (4) ACCOUNTANT MEMBERS.—Up to 2 of the  
8           members may be present or former certified public  
9           accountants, provided such members—

10                   (A) are not currently in public practices;

11                   (B) have not been a person associated with  
12           a public accounting firm for a period of at least  
13           3 years; and

14                   (C) agree to not be a person associated  
15           with a public accounting firm or to receive con-  
16           sulting fees from a public accounting firm for  
17           a period of 5 years after leaving the public reg-  
18           ulatory organization.

19           (5) NOMINATIONS.—In making appointments of  
20           members, the Chairman of the public regulatory or-  
21           ganization and the Chairman of the Commission  
22           shall consult with, and make appointments from  
23           nominations received from—

24                   (A) institutional investors;

25                   (B) public employee pension plans;



1 (C) pension plans organized pursuant to  
2 the Employee Retirement Income Security Act  
3 of 1974; and

4 (D) pension plans organized pursuant to  
5 the Taft-Hartley Act.

6 (6) TERMS.—The members of the public regu-  
7 latory organization shall have terms of 4 years, ex-  
8 cept that the Chairman of the public regulatory or-  
9 ganization and the Chairman of the Commission  
10 shall adopt procedures for staggering the initial  
11 terms of the members first so appointed to provide  
12 for a reasonable overlapping of the terms of office  
13 of subsequently elected members.

14 (7) FULL-TIME BASIS.—The members of the  
15 public regulatory organization shall serve on a full-  
16 time basis, severing all business ties with former  
17 firms or employers prior to beginning service on the  
18 public regulatory organization.

19 (8) RULES.—Following selection of the initial  
20 members of the public regulatory organization, the  
21 public regulatory organization shall propose and  
22 adopt rules, which shall provide for—

23 (A) the operation and administration of  
24 the public regulatory organization, including the  
25 compensation of the members of the public reg-



1 regulatory organization, which shall be at a level  
2 comparable to similar professional positions in  
3 the private sector;

4 (B) the appointment and compensation of  
5 such employees, attorneys, and consultants as  
6 may be necessary or appropriate to carry out  
7 the public regulatory organization's functions  
8 under this section;

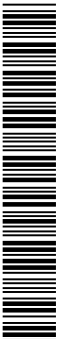
9 (C) the registration of public accounting  
10 firms with the public regulatory organization  
11 pursuant to subsections (d); and

12 (D) the matters described in subsections  
13 (e) and (f).

14 (9) FUNDING OF THE PUBLIC REGULATORY OR-  
15 GANIZATION.—

16 (A) SELF-FINANCING.—The public regu-  
17 latory organization shall establish rules for the  
18 assessment and collection of fees sufficient to  
19 recover the costs and expenses of the public  
20 regulatory organization and to permit the pub-  
21 lic regulatory organization to operate on a self-  
22 financing basis.

23 (B) ASSESSMENT AND COLLECTION.—The  
24 fees shall be assessed on issuers that file any fi-  
25 nancial statements, reports, or other documents



1 with the Commission under the securities laws  
2 that must be certified by a public accounting  
3 firm. The fees shall be collected through the  
4 public accounting firm that certifies such state-  
5 ment, report, or document.

6 (C) PAYMENT A CONDITION OF REGISTRA-  
7 TION.—The public regulatory organization shall  
8 terminate or suspend the registration under  
9 subsection (d) of any public accounting firm  
10 that fails to collect and transmit a fee assessed  
11 under this subsection.

12 (c) PROHIBITION ON THE OFFER OF BOTH AUDIT  
13 AND CONSULTING SERVICES.—

14 (1) MODIFICATION OF REGULATIONS RE-  
15 QUIRED.—The Commission shall revise its regula-  
16 tions pertaining to auditor independence to require  
17 that an accountant shall not be considered inde-  
18 pendent with respect to an audit client if the ac-  
19 countant provides to the client the following  
20 nonaudit services, subject to such conditions and ex-  
21 emptions as the Commission shall prescribe:

22 (A) financial information system design or  
23 implementation; or

24 (B) internal audit services.



1           (2)   AUDIT   COMMITTEE   APPROVAL   OF  
2   NONAUDIT SERVICES.—The Commission shall revise  
3   its regulations pertaining to auditor independence to  
4   require that—

5           (A) an accountant shall not be considered  
6           to be independent for purposes of certifying the  
7           financial statements or other documents of an  
8           issuer required to be filed with the Commission  
9           under the securities laws for any fiscal year of  
10          the issuer if, during such fiscal year, the ac-  
11          countant provides any nonaudit services unless  
12          the provision of such nonaudit services was ap-  
13          proved in advance by the audit committee or, in  
14          the absence of an audit committee, the equiva-  
15          lent board committee or the entire board of di-  
16          rectors; and

17          (B) in approving such services, the audit  
18          committee shall evaluate the impact of the pro-  
19          vision of such services on the independence of  
20          the auditor.

21          (3) REVIEW OF PROHIBITED NONAUDIT SERV-  
22          ICES.—The Commission is authorized to review the  
23          impact on the independence of auditors of the scope  
24          of services provided by auditors to issuers in order  
25          to determine whether the list of prohibited nonaudit



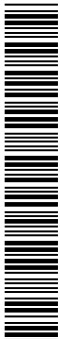
1 services under paragraph (1) shall be modified. In  
2 conducting such review, the Commission shall con-  
3 sider the impact of the provision of a service on an  
4 auditor's independence where provision of the service  
5 creates a conflict of interest with the audit client.

6 (4) ADDITIONS BY RULE.—After conducting the  
7 review required by paragraph (3) and at any other  
8 time, the Commission may, by rule consistent with  
9 the protection of investors and the public interest,  
10 modify the list of prohibited nonaudit services under  
11 paragraph (1).

12 (5) REPORT.—The Commission shall report to  
13 the Committee on Financial Services of the House of  
14 Representatives and the Committee on Banking,  
15 Housing, and Urban Affairs of the Senate on its  
16 conduct of any reviews as required by this section.  
17 The report shall include a discussion of regulatory or  
18 legislative steps that are recommended or that may  
19 be necessary to address concerns identified in the  
20 study.

21 (6) DEFINITIONS.—For purposes of this sub-  
22 section:

23 (A) FINANCIAL INFORMATION SYSTEM DE-  
24 SIGN OR IMPLEMENTATION.—The term “finan-  
25 cial information systems design or implementa-





tion” means designing or implementing a hardware or software system used to generate information that is significant to the audit client’s financial statements taken as a whole, not including services an accountant performs in connection with the assessment, design, and implementation of internal accounting controls and risk management controls.

(B) INTERNAL AUDIT SERVICES.—The term “internal audit services” means internal audit services for an audit client or an affiliate of an audit client, not including nonrecurring evaluations of discrete items or programs and operational internal audits unrelated to the internal accounting controls, financial systems, or financial statements.

(7) DEADLINE FOR RULEMAKING.—The Commission shall—

(A) within 90 days after the date of enactment of this Act, propose, and

(B) within 270 days after such date, prescribe,

the revisions to its regulations required by this subsection.

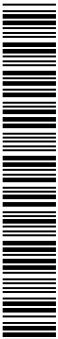


1 (d) REGISTRATION WITH PUBLIC REGULATORY OR-  
2 GANIZATION.—

3 (1) REGISTRATION REQUIRED.—Beginning 1  
4 year after the date on which all initial members of  
5 the public regulatory organization have been selected  
6 in accordance with subsection (b), it shall be unlaw-  
7 ful for a public accounting firm to furnish an ac-  
8 countant's report on any financial statement, report,  
9 or other document required to be filed with the  
10 Commission under any Federal securities law, unless  
11 such firm is registered with the public regulatory or-  
12 ganization.

13 (2) APPLICATION FOR REGISTRATION.—A pub-  
14 lic accounting firm may be registered under this  
15 subsection by filing with the public regulatory orga-  
16 nization an application for registration in such form  
17 and containing such information as the public regu-  
18 latory organization, by rule, may prescribe. Each ap-  
19 plication shall include—

20 (A) the names of all clients of the public  
21 accounting firm for which the firm furnishes ac-  
22 countant's reports on financial statements, re-  
23 ports, or other documents filed with the Com-  
24 mission;



1 (B) financial information of the public ac-  
2 counting firm for its most recent fiscal year, in-  
3 cluding its annual revenues from accounting  
4 and auditing services, its assets, and its liabil-  
5 ities;

6 (C) a statement of the public accounting  
7 firm's policies and procedures with respect to  
8 quality control of its accounting and auditing  
9 practice;

10 (D) information relating to criminal, civil,  
11 or administrative actions or formal disciplinary  
12 proceedings pending against such firm, or any  
13 person associated with such firm, in connection  
14 with an accountant's report furnished by such  
15 firm;

16 (E) a list of persons associated with the  
17 public accounting firm who are certified public  
18 accountants, including any State professional li-  
19 cense or certification number for each such per-  
20 son; and

21 (F) such other information that is reason-  
22 ably related to the public regulatory organiza-  
23 tion's responsibilities as the public regulatory  
24 organization considers necessary or appropriate.



1           (3) PERIODIC REPORTS.—Once in each year, or  
2           more frequently as the public regulatory organiza-  
3           tion, by rule, may prescribe, each public accounting  
4           firm registered with the public regulatory organiza-  
5           tion shall submit reports to the public regulatory or-  
6           ganization updating the information contained in its  
7           application for registration and containing such ad-  
8           ditional information that is reasonably related to the  
9           public regulatory organization's responsibilities as  
10          the public regulatory organization, by rule, may pre-  
11          scribe.

12          (4) EXEMPTIONS.—The Commission, by rule or  
13          order, upon its own motion or upon application, may  
14          conditionally or unconditionally exempt any public  
15          accounting firm or any accountant's report, or any  
16          class of public accounting firms or any class of ac-  
17          countant's reports, from any provisions of this sec-  
18          tion or the rules or regulations issued hereunder, if  
19          the Commission finds that such exemption is con-  
20          sistent with the public interest, the protection of in-  
21          vestors, and the purposes of this section.

22          (5) CONFIDENTIALITY.—The public regulatory  
23          organization may, by rule, designate portions of the  
24          filings required pursuant to paragraphs (2) and (3)  
25          as privileged and confidential. This paragraph shall



1 be considered to be a statute described in section  
2 552(b)(3)(B) of title 5, United States Code, for pur-  
3 poses of that section 552.

4 (e) DUTIES REGARDING QUALITY CONTROL.—

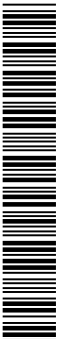
5 (1) OBJECTIVES; ATTAINMENT.—The public  
6 regulatory organization shall seek to promote a high  
7 level of professional conduct among public account-  
8 ing firms registered with the public regulatory orga-  
9 nization, to improve the quality of audit services pro-  
10 vided by such firms, and, in general, to protect in-  
11 vestors and promote the public interest. The public  
12 regulatory organization shall attain these  
13 objectives—

14 (A) by establishing standards regarding  
15 the performance of financial audits in accord-  
16 ance with the requirements of paragraph (2);

17 (B) by the direct performance of quality  
18 reviews and inspections of audits in accordance  
19 with the requirements of paragraphs (3) and  
20 (4); and

21 (C) by the supervision and oversight of  
22 peer review organizations in accordance with  
23 the requirements of paragraph (5).

24 (2) AUDIT QUALITY STANDARDS.—



1 (A) IN GENERAL.—The public regulatory  
2 organization shall, by rule, establish quality  
3 standards applicable to the conduct of audit  
4 services provided by public accounting firms.  
5 Such standards shall include—

6 (i) independence standards;

7 (ii) quality control standards;

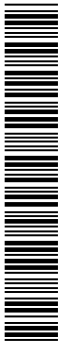
8 (iii) professional and ethical stand-  
9 ards; and

10 (iv) such other standards as the public  
11 regulatory organization determines to be  
12 necessary to carry out the objectives speci-  
13 fied in paragraph (1).

14 (B) SPECIFIC CONTENTS OF STAND-  
15 ARDS.—In establishing the quality standards  
16 required by subparagraph (A), the public regu-  
17 latory organization shall also establish—

18 (i) procedures for the monitoring by  
19 public accounting firms of their compliance  
20 with professional ethical standards estab-  
21 lished by the public regulatory organiza-  
22 tion, including its independence from its  
23 audit clients;

24 (ii) procedures for the assignment of  
25 personnel to audit engagements;



1 (iii) procedures for consultation within  
2 a public accounting firm or with other ac-  
3 countants relating to accounting and audit-  
4 ing questions;

5 (iv) procedures for the supervision of  
6 audit work;

7 (v) procedures for the review of deci-  
8 sions to accept and retain audit clients;

9 (vi) procedures for the internal inspec-  
10 tion of the public accounting firms own  
11 compliance with such policies and proce-  
12 dures;

13 (vii) requirements for public account-  
14 ing firms to prepare and maintain for a  
15 period of no less than 7 years, audit work  
16 papers and other information related to  
17 any audit report, in sufficient detail to  
18 support the conclusions reached in an  
19 audit report issued by a public accounting  
20 firm; and

21 (viii) procedures establishing “concur-  
22 ring” or “second” partner review systems  
23 for the evaluation and review of audit work  
24 by a partner that is not in charge of the  
25 conduct of the audit.



1           (3) DIRECT REVIEWS OF PUBLIC ACCOUNTING  
2       FIRMS.—The public regulatory organization shall, by  
3       rule, establish procedures for the conduct of a con-  
4       tinuing program of inspections of each public ac-  
5       counting firm registered with the public regulatory  
6       organization to assess compliance by such firm, and  
7       by persons associated with such firm, with applicable  
8       provisions of this Act, the securities laws, the rules  
9       and regulations thereunder, the rules adopted by the  
10      public regulatory organization, and professional  
11      standards. Except as provided in paragraph (5), the  
12      public regulatory organization shall annually inspect  
13      each public accounting firm that audits more than  
14      100 issuers on an ongoing annual basis, to the ex-  
15      tent practicable, and all other public accounting  
16      firms no less than at least once every 3 years. In  
17      conducting such inspections, the public regulatory  
18      organization shall, among other things, inspect se-  
19      lected audit and review engagements. The review  
20      shall include evaluations of the firm's quality control  
21      procedures and compliance with all legal and ethical  
22      requirements. In connection with each review, the  
23      public regulatory organization shall prepare a report  
24      of its findings and such report, accompanied by any  
25      letter of comments by the public regulatory organi-



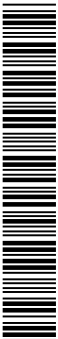


1 zation or reviewer and any letter of response from  
2 the firm under review, shall be made available to the  
3 public. The public regulatory organization shall take  
4 any appropriate disciplinary or remedial action  
5 based on its findings after completion of such review  
6 and an opportunity for a hearing.

7 (4) QUALITY REVIEW OF INDIVIDUAL AU-  
8 DITS.—The public regulatory organization shall, by  
9 rule, establish procedures for the conduct of direct  
10 inspection and review of individual audits of issuers  
11 and standards under which it will evaluate audit  
12 service quality. A finding by the public regulatory  
13 organization that an individual audit of an issuer did  
14 or did not meet the standards of the public regu-  
15 latory organization with respect to the quality of the  
16 audit shall not be construed in any action arising  
17 out of the securities laws as indicative of compliance  
18 or noncompliance with the securities laws or with  
19 any standard of liability arising thereunder.

20 (5) USE OF PROFESSIONAL PEER REVIEW OR-  
21 GANIZATIONS.—

22 (A) OPTION TO UTILIZE PEER REVIEW OR-  
23 GANIZATIONS.—The public regulatory organiza-  
24 tion may, by rule, establish requirements for  
25 the use of peer review organizations for the



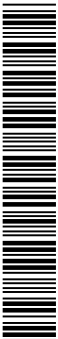
1 purposes of conducting the continuing program  
2 of inspections to assess compliance as required  
3 by paragraph (3) of each public accounting firm  
4 registered with the public regulatory organiza-  
5 tion. Such rule shall provide for appropriate  
6 oversight and supervision of such peer review  
7 organization by the public regulatory organiza-  
8 tion to ensure that such inspections meet the  
9 requirements of such paragraph.

10 (B) PENALTIES.—If the public regulatory  
11 organization establishes requirements for the  
12 conduct of peer reviews under subparagraph  
13 (A), the violation by a public accounting firm or  
14 a person associated with such a firm of a rule  
15 of the peer review organization to which the  
16 firm belongs shall constitute grounds for—

17 (i) the imposition of disciplinary sanc-  
18 tions by the public regulatory organization  
19 pursuant to subsection (g); and

20 (ii) denial to the public accounting  
21 firm or person associated with such firm of  
22 the privilege of appearing or practicing be-  
23 fore the Commission.

24 (6) CONFIDENTIALITY.—Except as otherwise  
25 provided by this section, all reports, memoranda,



1 and other information provided to the public regu-  
2 latory organization solely for purposes of paragraph  
3 (3) or (4), or to a peer review organization certified  
4 by the public regulatory organization, shall be con-  
5 fidential, unless such confidentiality is expressly  
6 waived by the person or entity that created or pro-  
7 vided the information.

8 (f) DISCIPLINARY DUTIES OF PUBLIC REGULATORY  
9 ORGANIZATION.—The public regulatory organization shall  
10 have the following duties and powers:

11 (1) INVESTIGATIONS AND DISCIPLINARY PRO-  
12 CEEDINGS.—The public regulatory organization shall  
13 establish fair procedures for investigating and dis-  
14 ciplining public accounting firms registered with the  
15 public regulatory organization, and persons associ-  
16 ated with such firms, for violations of the Federal  
17 securities laws, the rules or regulations issued there-  
18 under, the rules adopted by the public regulatory or-  
19 ganization, or professional standards in connection  
20 with the preparation of an accountant's report on a  
21 financial statement, report, or other document filed  
22 with the Commission.

23 (2) INVESTIGATION PROCEDURES.—

24 (A) IN GENERAL.—The public regulatory  
25 organization may conduct an investigation of



1 any act, practice, or omission by a public ac-  
2 counting firm registered with the public regu-  
3 latory organization, or by any person associated  
4 with such firm, in connection with the prepara-  
5 tion of an accountant's report on a financial  
6 statement, report, or other document filed with  
7 the Commission that may violate any applicable  
8 provision of the Federal securities laws, the  
9 rules and regulations issued thereunder, the  
10 rules adopted by the public regulatory organiza-  
11 tion, or professional standards, whether such  
12 act, practice, or omission is the subject of a  
13 criminal, civil, or administrative action, or a  
14 disciplinary proceeding, or otherwise is brought  
15 to the attention of the public regulatory organi-  
16 zation.

17 (B) POWERS OF PUBLIC REGULATORY OR-  
18 GANIZATION.—For purposes of an investigation  
19 under this paragraph, the public regulatory or-  
20 ganization may, in addition to such other ac-  
21 tions as the public regulatory organization de-  
22 termines to be necessary or appropriate—

23 (i) require the testimony of any per-  
24 son associated with a public accounting  
25 firm registered with the public regulatory



1 organization, with respect to any matter  
2 which the public regulatory organization  
3 considers relevant or material to the inves-  
4 tigation;

5 (ii) require the production of audit  
6 workpapers and any other document or in-  
7 formation in the possession of a public ac-  
8 counting firm registered with the public  
9 regulatory organization, or any person as-  
10 sociated with such firm, wherever domi-  
11 ciled, that the public regulatory organiza-  
12 tion considers relevant or material to the  
13 investigation, and may examine the books  
14 and records of such firm to verify the ac-  
15 curacy of any documents or information so  
16 supplied; and

17 (iii) request the testimony of any per-  
18 son and the production of any document in  
19 the possession of any person, including a  
20 client of a public accounting firm reg-  
21 istered with the public regulatory organiza-  
22 tion, that the public regulatory organiza-  
23 tion considers relevant or material to the  
24 investigation.



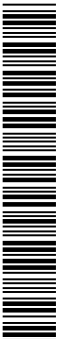
1 (C) SUSPENSION OR REVOCATION OF REG-  
2 ISTRATION FOR NONCOMPLIANCE.—The refusal  
3 of any person associated with a public account-  
4 ing firm registered with the public regulatory  
5 organization to testify, or the refusal of any  
6 such person to produce documents or otherwise  
7 cooperate with the public regulatory organiza-  
8 tion, in connection with an investigation or  
9 hearing under this section, shall be cause for  
10 suspending or barring such person from associ-  
11 ating with a public accounting firm registered  
12 with the public regulatory organization, or such  
13 other appropriate sanction authorized by para-  
14 graph (3)(B) as the public regulatory organiza-  
15 tion shall determine. The refusal of any public  
16 accounting firm registered with the public regu-  
17 latory organization to produce documents or  
18 otherwise cooperate with the public regulatory  
19 organization, in connection with an investiga-  
20 tion or hearing under this section, shall be  
21 cause for the suspension or revocation of the  
22 registration of such firm, or such other appro-  
23 priate sanction authorized by paragraph (3)(B)  
24 as the public regulatory organization shall de-  
25 termine.



1 (D) REFERRAL TO COMMISSION.—

2 (i) IN GENERAL.—If the public regu-  
3 latory organization is unable to conduct or  
4 complete an investigation or hearing under  
5 this section because of the refusal of any  
6 client of a public accounting firm reg-  
7 istered with the public regulatory organiza-  
8 tion, or any other person, to testify,  
9 produce documents, or otherwise cooperate  
10 with the public regulatory organization in  
11 connection with such investigation, the  
12 public regulatory organization shall report  
13 such refusal to the Commission.

14 (ii) INVESTIGATION.—The Commis-  
15 sion may designate the public regulatory  
16 organization or one or more officers of the  
17 public regulatory organization who shall be  
18 empowered, in accordance with such proce-  
19 dures as the Commission may adopt, to  
20 subpoena witnesses, compel their attend-  
21 ance, and require the production of any  
22 books, papers, correspondence, memo-  
23 randa, or other records relevant to any in-  
24 vestigation by the public regulatory organi-  
25 zation. Attendance of witnesses and the



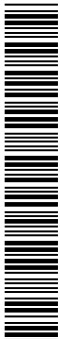
1 production of any records may be required  
2 from any place in the United States or any  
3 State at any designated place of hearing.  
4 Enforcement of a subpoena issued by the  
5 public regulatory organization, or an offi-  
6 cer of the public regulatory organization,  
7 pursuant to this subparagraph shall occur  
8 in the manner provided for in section  
9 21(c). Examination of witnesses subpoe-  
10 naed pursuant to this subparagraph shall  
11 be conducted before an officer authorized  
12 to administer oaths by the laws of the  
13 United States or of the place where the ex-  
14 amination is held.

15 (iii) REFERRALS TO COMMISSION.—

16 The public regulatory organization may  
17 refer any investigation to the Commission,  
18 as the public regulatory organization  
19 deems appropriate.

20 (E) IMMUNITY FROM CIVIL LIABILITY.—

21 An employee of the public regulatory organiza-  
22 tion engaged in carrying out an investigation or  
23 disciplinary proceeding under this section shall  
24 be immune from any civil liability arising out of  
25 such investigation or disciplinary proceeding in





1 the same manner and to the same extent as an  
2 employee of the Federal Government in similar  
3 circumstances.

4 (3) DISCIPLINARY PROCEDURES.—

5 (A) DECISION TO DISCIPLINE.—In a pro-  
6 ceeding by the public regulatory organization to  
7 determine whether a public accounting firm, or  
8 a person associated with such firm, should be  
9 disciplined, the public regulatory organization  
10 shall bring specific charges, notify such firm or  
11 person of the charges, give such firm or person  
12 an opportunity to defend against such charges,  
13 and keep a record of such actions.

14 (B) SANCTIONS.—If the public regulatory  
15 organization, after conducting a review and pro-  
16 viding an opportunity for a hearing, finds that  
17 a public accounting firm, or a person associated  
18 with such firm, has engaged in any act, prac-  
19 tice, or omission in violation of the Federal se-  
20 curities laws, the rules or regulations issued  
21 thereunder, the rules adopted by the public reg-  
22 ulatory organization, or professional standards,  
23 the public regulatory organization may impose  
24 such disciplinary sanctions as it deems appro-  
25 priate, including—



1 (i) temporary or permanent revocation  
2 or suspension of registration under this  
3 section;

4 (ii) limitation of activities, functions,  
5 and operations;

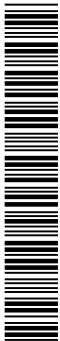
6 (iii) fine;

7 (iv) censure;

8 (v) in the case of a person associated  
9 with a public accounting firm, suspension  
10 or bar from being associated with a public  
11 accounting firm registered with the public  
12 regulatory organization; and

13 (vi) any such other disciplinary sanc-  
14 tion or remedial action as the public regu-  
15 latory organization has established by rule  
16 that the public regulatory organization de-  
17 termines to be appropriate to prevent the  
18 recurrence of the violation.

19 (C) STATEMENT REQUIRED.—A deter-  
20 mination by the public regulatory organization  
21 to impose a disciplinary sanction shall be sup-  
22 ported by a written statement by the public reg-  
23 ulatory organization that shall be made avail-  
24 able to the public and that sets forth—



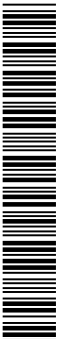
1 (i) any act or practice in which the  
2 public accounting firm or person associated  
3 with such firm has been found to have en-  
4 gaged, or which such firm or person has  
5 been found to have omitted;

6 (ii) the specific provision of the Fed-  
7 eral securities laws, the rules or regula-  
8 tions issued thereunder, the rules adopted  
9 by the public regulatory organization, or  
10 professional standards which any such act,  
11 practice, or omission is deemed to violate;  
12 and

13 (iii) the sanction imposed and the rea-  
14 sons therefor.

15 (D) PROHIBITION ON ASSOCIATION.—It  
16 shall be unlawful—

17 (i) for any person as to whom a sus-  
18 pension or bar is in effect willfully to be or  
19 to become associated with a public ac-  
20 counting firm registered with the public  
21 regulatory organization, in connection with  
22 the preparation of an accountant's report  
23 on any financial statement, report, or other  
24 document filed with the Commission, with-



1 out the consent of the public regulatory or-  
2 ganization or the Commission; and

3 (ii) for any public accounting firm  
4 registered with the public regulatory orga-  
5 nization to permit such a person to be-  
6 come, or remain, associated with such firm  
7 without the consent of the public regu-  
8 latory organization or the Commission, if  
9 such firm knew or, in the exercise of rea-  
10 sonable care should have known, of such  
11 suspension or bar.

12 (4) REPORTING OF SANCTIONS.—If the public  
13 regulatory organization imposes a disciplinary sanc-  
14 tion against a public accounting firm, or a person  
15 associated with such firm, the public regulatory or-  
16 ganization shall report such sanction to the Commis-  
17 sion, to the appropriate State or foreign licensing  
18 public regulatory organization or public regulatory  
19 organizations with which such firm or such person  
20 is licensed or certified to practice public accounting,  
21 and to the public. The information reported shall  
22 include—

23 (A) the name of the public accounting  
24 firm, or person associated with such firm,  
25 against whom the sanction is imposed;



1 (B) a description of the acts, practices, or  
2 omissions upon which the sanction is based;

3 (C) the nature of the sanction; and

4 (D) such other information respecting the  
5 circumstances of the disciplinary action (includ-  
6 ing the name of any client of such firm affected  
7 by such acts, practices, or omissions) as the  
8 public regulatory organization deems appro-  
9 priate.

10 (5) DISCOVERY AND ADMISSIBILITY OF PUBLIC  
11 REGULATORY ORGANIZATION MATERIAL.—

12 (A) DISCOVERABILITY.—

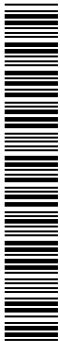
13 (i) IN GENERAL.—Except as provided  
14 in subparagraph (C), all reports, memo-  
15 randa, and other information prepared,  
16 collected, or received by the public regu-  
17 latory organization, and the deliberations  
18 and other proceedings of the public regu-  
19 latory organization and its employees and  
20 agents in connection with an investigation  
21 or disciplinary proceeding under this sec-  
22 tion shall not be subject to any form of  
23 civil discovery, including demands for pro-  
24 duction of documents and for testimony of  
25 individuals, in connection with any pro-



1           ceeding in any State or Federal court, or  
2           before any State or Federal administrative  
3           agency. This subparagraph shall not apply  
4           to any information provided to the public  
5           regulatory organization that would have  
6           been subject to discovery from the person  
7           or entity that provided it to the public reg-  
8           ulatory organization, but is no longer avail-  
9           able from that person or entity.

10           (ii) EXEMPTION.—Submissions to the  
11           public regulatory organization by or on be-  
12           half of a public accounting firm or person  
13           associated with such a firm or on behalf of  
14           any other participant in a public regulatory  
15           organization proceeding (other than a pub-  
16           lic hearing), including documents gen-  
17           erated by the public regulatory organiza-  
18           tion itself, shall be exempt from discovery  
19           to the same extent as the material de-  
20           scribed in clause (i), whether in the posses-  
21           sion of the public regulatory organization  
22           or any other person, if such submission—

23                   (I) is prepared specifically for the  
24                   purpose of the public regulatory orga-  
25                   nization proceeding; and



1 (II) addresses the merits of the  
2 issues under investigation by the pub-  
3 lic regulatory organization.

4 (iii) HEARINGS PUBLIC.—Except as  
5 otherwise ordered by the public regulatory  
6 organization on its own motion or on the  
7 motion of a party, all hearings under this  
8 paragraph shall be open to the public.

9 (B) ADMISSIBILITY.—

10 (i) IN GENERAL.—Except as provided  
11 in subparagraph (C), all reports, memo-  
12 randa, and other information prepared,  
13 collected, or received by the public regu-  
14 latory organization, the deliberations and  
15 other proceedings of the public regulatory  
16 organization and its employees and agents  
17 in connection with an investigation or dis-  
18 ciplinary proceeding under this section, the  
19 fact that an investigation or disciplinary  
20 proceeding has been commenced, and the  
21 public regulatory organization's determina-  
22 tion with respect to any investigation or  
23 disciplinary proceeding shall be inadmis-  
24 sible in any proceeding in any State or



1 Federal court or before any State or Fed-  
2 eral administrative agency.

3 (ii) TREATMENT OF CERTAIN DOCU-  
4 MENTS.—Submissions to the public regu-  
5 latory organization by or on behalf of a  
6 public accounting firm or person associated  
7 with such a firm or on behalf of any other  
8 participant in a public regulatory organiza-  
9 tion proceeding, including documents gen-  
10 erated by the public regulatory organiza-  
11 tion itself, shall be inadmissible to the  
12 same extent as the material described in  
13 clause (i), if such submission—

14 (I) is prepared specifically for the  
15 purpose of the public regulatory orga-  
16 nization proceedings; and

17 (II) addresses the merits of the  
18 issues under investigation by the pub-  
19 lic regulatory organization.

20 (C) AVAILABILITY AND ADMISSIBILITY OF  
21 INFORMATION.—

22 (i) IN GENERAL.—All information re-  
23 ferred to in subparagraphs (A) and (B)  
24 shall be—

25 (I) available to the Commission;





1 (II) available to any other Fed-  
2 eral department or agency in connec-  
3 tion with the exercise of its regulatory  
4 authority to the extent that such in-  
5 formation would be available to such  
6 agency from the Commission as a re-  
7 sult of a Commission enforcement in-  
8 vestigation;

9 (III) available to Federal and  
10 State authorities in connection with  
11 any criminal investigation or pro-  
12 ceeding;

13 (IV) admissible in any action  
14 brought by the Commission or any  
15 other Federal department or agency  
16 pursuant to its regulatory authority,  
17 to the extent that such information  
18 would be available to such agency  
19 from the Commission as a result of a  
20 Commission enforcement investigation  
21 and in any criminal action; and

22 (V) available to State licensing  
23 public regulatory organizations to the  
24 extent authorized in paragraph (6).

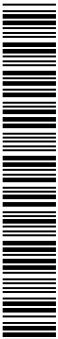


1 (ii) OTHER LIMITATIONS.—Any docu-  
2 ments or other information provided to the  
3 Commission or other authorities pursuant  
4 to clause (i) shall be subject to the limita-  
5 tions on discovery and admissibility set  
6 forth in subparagraphs (A) and (B).

7 (6) PARTICIPATION BY STATE LICENSING PUB-  
8 LIC REGULATORY ORGANIZATIONS.—

9 (A) NOTICE.—When the public regulatory  
10 organization institutes an investigation pursu-  
11 ant to paragraph (2)(A), it shall notify the  
12 State licensing public regulatory organizations  
13 in the States in which the public accounting  
14 firm or person associated with such firm en-  
15 gaged in the act or failure to act alleged to have  
16 violated professional standards, of the pendency  
17 of the investigation, and shall invite the State  
18 licensing public regulatory organizations to par-  
19 ticipate in the investigation.

20 (B) ACCEPTANCE BY STATE PUBLIC REGU-  
21 LATORY ORGANIZATION.—If a State licensing  
22 public regulatory organization elects to join in  
23 the investigation, its representatives shall par-  
24 ticipate, pursuant to rules established by the  
25 public regulatory organization, in investigating

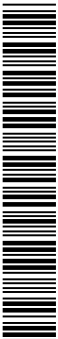


1 the matter and in presenting the evidence justi-  
2 fying the charges in any hearing pursuant to  
3 paragraph (3)(A).

4 (C) STATE SANCTIONS PERMITTED.—If  
5 the public regulatory organization or the Com-  
6 mission imposes a sanction upon a public ac-  
7 counting firm or person associated with such a  
8 firm, and that determination either is not sub-  
9 jected to judicial review or is upheld on judicial  
10 review, a State licensing public regulatory orga-  
11 nization may impose a sanction on the basis of  
12 the public regulatory organization's report pur-  
13 suant to paragraph (4). Any sanction imposed  
14 by the State licensing public regulatory organi-  
15 zation under this clause shall be inadmissible in  
16 any proceeding in any State or Federal court or  
17 before any State or Federal administrative  
18 agency.

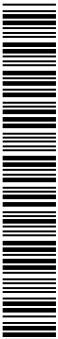
19 (g) REVIEW AND APPROVAL OF RULES.—

20 (1) SUBMISSION, PUBLICATION, AND COM-  
21 MENT.—Each recognized public regulatory organiza-  
22 tion shall file with the Commission, in accordance  
23 with such rules as the Commission may prescribe,  
24 copies of any proposed rule or any proposed change  
25 in, addition to, or deletion from the rules of such



1 recognized public regulatory organization (herein-  
2 after in this subsection collectively referred to as a  
3 “proposed rule change”) accompanied by a concise  
4 general statement of the basis and purpose of such  
5 proposed rule change. The Commission shall, upon  
6 the filing of any proposed rule change, publish notice  
7 thereof together with the terms of substance of the  
8 proposed rule change or a description of the subjects  
9 and issues involved. The Commission shall give in-  
10 terested persons an opportunity to submit written  
11 data, views, and arguments concerning such pro-  
12 posed rule change. No proposed rule change shall  
13 take effect unless approved by the Commission or  
14 otherwise permitted in accordance with the provi-  
15 sions of this subsection.

16 (2) APPROVAL OR PROCEEDINGS.—Within 35  
17 days of the date of publication of notice of the filing  
18 of a proposed rule change in accordance with para-  
19 graph (1) of this subsection, or within such longer  
20 period as the Commission may designate up to 90  
21 days of such date if it finds such longer period to  
22 be appropriate and publishes its reasons for so find-  
23 ing or as to which the recognized public regulatory  
24 organization consents, the Commission shall—

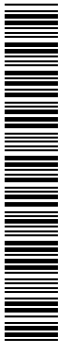


1 (A) by order approve such proposed rule  
2 change; or

3 (B) institute proceedings to determine  
4 whether the proposed rule change should be dis-  
5 approved. Such proceedings shall include notice  
6 of the grounds for disapproval under consider-  
7 ation and opportunity for hearing and be con-  
8 cluded within 180 days of the date of publica-  
9 tion of notice of the filing of the proposed rule  
10 change. At the conclusion of such proceedings  
11 the Commission, by order, shall approve or dis-  
12 approve such proposed rule change. The Com-  
13 mission may extend the time for conclusion of  
14 such proceedings for up to 60 days if it finds  
15 good cause for such extension and publishes its  
16 reasons for so finding or for such longer period  
17 as to which the recognized public regulatory or-  
18 ganization consents.

19 (3) BASIS FOR APPROVAL OR DISAPPROVAL.—

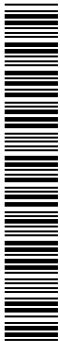
20 The Commission shall approve a proposed rule  
21 change of a recognized public regulatory organiza-  
22 tion if it finds that such proposed rule change is  
23 consistent with the requirements of this Act and the  
24 rules and regulations thereunder applicable to such  
25 organization. The Commission shall disapprove a



1 proposed rule change of a recognized public regu-  
2 latory organization if it does not make such finding.  
3 The Commission shall not approve any proposed rule  
4 change prior to the 30th day after the date of publi-  
5 cation of notice of the filing thereof, unless the Com-  
6 mission finds good cause for so doing and publishes  
7 its reasons for so finding.

8 (4) RULES EFFECTIVE UPON FILING.—

9 (A) Notwithstanding the provisions of  
10 paragraph (2) of this subsection, a proposed  
11 rule change may take effect upon filing with the  
12 Commission if designated by the recognized  
13 public regulatory organization as (i) consti-  
14 tuting a stated policy, practice, or interpreta-  
15 tion with respect to the meaning, administra-  
16 tion, or enforcement of an existing rule of the  
17 recognized public regulatory organization, (ii)  
18 establishing or changing a due, fee, or other  
19 charge imposed by the recognized public regu-  
20 latory organization, or (iii) concerned solely  
21 with the administration of the recognized public  
22 regulatory organization or other matters which  
23 the Commission, by rule, consistent with the  
24 public interest and the purposes of this sub-



1 section, may specify as outside the provisions of  
2 such paragraph (2).

3 (B) Notwithstanding any other provision of  
4 this subsection, a proposed rule change may be  
5 put into effect summarily if it appears to the  
6 Commission that such action is necessary for  
7 the protection of investors, or otherwise in ac-  
8 cordance with the purposes of this title. Any  
9 proposed rule change so put into effect shall be  
10 filed promptly thereafter in accordance with the  
11 provisions of paragraph (1) of this subsection.

12 (C) Any proposed rule change of a recog-  
13 nized public regulatory organization which has  
14 taken effect pursuant to subparagraph (A) or  
15 (B) of this paragraph may be enforced by such  
16 organization to the extent it is not inconsistent  
17 with the provisions of this Act, the securities  
18 laws, the rules and regulations thereunder, and  
19 applicable Federal and State law. At any time  
20 within 60 days of the date of filing of such a  
21 proposed rule change in accordance with the  
22 provisions of paragraph (1) of this subsection,  
23 the Commission summarily may abrogate the  
24 change in the rules of the recognized public reg-  
25 ulatory organization made thereby and require



1           that the proposed rule change be refiled in ac-  
2           cordance with the provisions of paragraph (1)  
3           of this subsection and reviewed in accordance  
4           with the provisions of paragraph (2) of this  
5           subsection, if it appears to the Commission that  
6           such action is necessary or appropriate in the  
7           public interest, for the protection of investors,  
8           or otherwise in furtherance of the purposes of  
9           this Act. Commission action pursuant to the  
10          preceding sentence shall not affect the validity  
11          or force of the rule change during the period it  
12          was in effect, shall not be subject to court re-  
13          view, and shall not be deemed to be “final agen-  
14          cy action” for purposes of section 704 of title  
15          5, United States Code.

16          (h) COMMISSION ACTION TO CHANGE RULES.—The  
17          Commission, by rule, may abrogate, add to, and delete  
18          from (hereinafter in this subsection collectively referred to  
19          as “amend”) the rules of a recognized public regulatory  
20          organization as the Commission deems necessary or ap-  
21          propriate to insure the fair administration of the recog-  
22          nized public regulatory organization, to conform its rules  
23          to requirements of this Act, the securities laws, and the  
24          rules and regulations thereunder applicable to such orga-



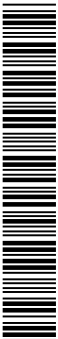


1 nization, or otherwise in furtherance of the purposes of  
2 this Act, in the following manner:

3 (1) The Commission shall notify the recognized  
4 public regulatory organization and publish notice of  
5 the proposed rulemaking in the Federal Register.  
6 The notice shall include the text of the proposed  
7 amendment to the rules of the recognized public reg-  
8 ulatory organization and a statement of the Com-  
9 mission's reasons, including any pertinent facts, for  
10 commencing such proposed rulemaking.

11 (2) The Commission shall give interested per-  
12 sons an opportunity for the oral presentation of  
13 data, views, and arguments, in addition to an oppor-  
14 tunity to make written submissions. A transcript  
15 shall be kept of any oral presentation.

16 (3) A rule adopted pursuant to this subsection  
17 shall incorporate the text of the amendment to the  
18 rules of the recognized public regulatory organiza-  
19 tion and a statement of the Commission's basis for  
20 and purpose in so amending such rules. This state-  
21 ment shall include an identification of any facts on  
22 which the Commission considers its determination so  
23 to amend the rules of the recognized public regu-  
24 latory agency to be based, including the reasons for



1 the Commission's conclusions as to any of such facts  
2 which were disputed in the rulemaking.

3 (4)(A) Except as provided in paragraphs (1)  
4 through (3) of this subsection, rulemaking under  
5 this subsection shall be in accordance with the pro-  
6 cedures specified in section 553 of title 5, United  
7 States Code, for rulemaking not on the record.

8 (B) Nothing in this subsection shall be con-  
9 strued to impair or limit the Commission's power to  
10 make, or to modify or alter the procedures the Com-  
11 mission may follow in making, rules and regulations  
12 pursuant to any other authority under the securities  
13 laws.

14 (C) Any amendment to the rules of a recog-  
15 nized public regulatory organization made by the  
16 Commission pursuant to this subsection shall be con-  
17 sidered for all purposes to be part of the rules of  
18 such recognized public regulatory organization and  
19 shall not be considered to be a rule of the Commis-  
20 sion.

21 (i) COMMISSION OVERSIGHT OF THE PRO.—

22 (1) RECORDS AND EXAMINATIONS.—A public  
23 regulatory organization shall make and keep for pre-  
24 scribed periods such records, furnish such copies  
25 thereof, and make and disseminate such reports as



1 the Commission, by rule, prescribes as necessary or  
2 appropriate in the public interest, for the protection  
3 of investors, or otherwise in furtherance of the pur-  
4 poses of this Act or the securities laws.

5 (2) ADDITIONAL DUTIES; SPECIAL REVIEWS.—

6 A public regulatory organization shall perform such  
7 other duties or functions as the Commission, by rule  
8 or order, determines are necessary or appropriate in  
9 the public interest or for the protection of investors  
10 and to carry out the purposes of this Act and the  
11 securities laws, including conducting a special review  
12 of a particular public accounting firm's quality con-  
13 trol system or a special review of a particular aspect  
14 of some or all public accounting firms' quality con-  
15 trol systems.

16 (3) ANNUAL REPORT; PROPOSED BUDGET.—

17 (A) SUBMISSION OF ANNUAL REPORT AND  
18 BUDGET.—A public regulatory organization  
19 shall submit an annual report and its proposed  
20 budget to the Commission for review and ap-  
21 proval, by order, at such times and in such  
22 form as the Commission shall prescribe.

23 (B) CONTENTS OF ANNUAL REPORT.—

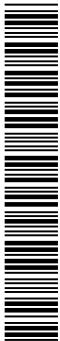
24 Each annual report required by subparagraph

25 (A) shall include—



- 1 (i) a detailed description of the activi-  
2 ties of the public regulatory organization;  
3 (ii) the audited financial statements of  
4 the public regulatory organization;  
5 (iii) a detailed explanation of the fees  
6 and charges imposed by the public regu-  
7 latory organization under subsection  
8 (b)(9); and  
9 (iv) such other matters as the public  
10 regulatory organization or the Commission  
11 deems appropriate.

12 (C) TRANSMITTAL OF ANNUAL REPORT TO  
13 CONGRESS.—The Commission shall transmit  
14 each approved annual report received under  
15 subparagraph (A) to the Committee on Finan-  
16 cial Services of the United States House of  
17 Representatives and the Committee on Bank-  
18 ing, Housing, and Urban Affairs of the United  
19 States Senate. At the same time it transmits a  
20 public regulatory organization's annual report  
21 under this subparagraph, the Commission shall  
22 include a written statement of its views of the  
23 functioning and operations of the public regu-  
24 latory organization.



1 (D) PUBLIC AVAILABILITY.—Following  
2 transmittal of each approved annual report  
3 under subparagraph (C), the Commission and  
4 the public regulatory organization shall make  
5 the approved annual report publicly available.

6 (4) DISAPPROVAL OF ELECTION OF PRO MEM-  
7 BER.—The Commission is authorized, by order, if in  
8 its opinion such action is necessary or appropriate in  
9 the public interest, for the protection of investors, or  
10 otherwise in furtherance of the purposes of this Act  
11 or the securities laws, to disapprove the election of  
12 any member of a public regulatory organization if  
13 the Commission determines, after notice and oppor-  
14 tunity for hearing, that the person elected is unfit  
15 to serve on the public regulatory organization.

16 (j) CLARIFICATION OF APPLICATION OF PRO AU-  
17 THORITY.—The authority granted to any such organiza-  
18 tion in this section shall only apply to the actions of ac-  
19 countants related to the certification of financial state-  
20 ments required by securities laws and not other actions  
21 or actions for other clients of the accounting firm or any  
22 accountant that does not certify financial statements for  
23 publicly traded companies.

24 (k) DEADLINE FOR RULEMAKING.—The Commission  
25 shall—



1 (1) within 90 days after the date of enactment  
2 of this Act, propose, and

3 (2) within 270 days after such date, prescribe,  
4 rules to implement this section.

5 (l) EFFECTIVE DATE; TRANSITION PROVISIONS.—

6 (1) EFFECTIVE DATE.—Except as provided in  
7 paragraph (2), subsection (a) of this section shall be  
8 effective with respect to any certified financial state-  
9 ment for any fiscal year that ends more than one  
10 year after the Commission recognizes a public regu-  
11 latory organization pursuant to this section.

12 (2) DELAY IN ESTABLISHMENT OF BOARD.—If  
13 the Commission has failed to recognize any public  
14 regulatory organization pursuant to this section  
15 within one year after the date of enactment of this  
16 Act, the Commission shall perform the duties of  
17 such organization with respect to any certified finan-  
18 cial statement for any fiscal year that ends before  
19 one year after any such board is recognized by the  
20 Commission.

21 **SEC. 3. IMPROPER INFLUENCE ON CONDUCT OF AUDITS.**

22 (a) RULES TO PROHIBIT.—It shall be unlawful in  
23 contravention of such rules or regulations as the Commis-  
24 sion shall prescribe as necessary and appropriate in the  
25 public interest or for the protection of investors for any



1 officer, director, or affiliated person of an issuer of any  
2 security registered under section 12 of the Securities Ex-  
3 change Act of 1934 (15 U.S.C. 78l) to take any action  
4 to fraudulently influence, coerce, manipulate, or mislead  
5 any independent public or certified accountant engaged in  
6 the performance of an audit of the financial statements  
7 of such issuer for the purpose of rendering such financial  
8 statements materially misleading. In any civil proceeding,  
9 the Commission shall have exclusive authority to enforce  
10 this section and any rule or regulation hereunder.

11 (b) NO PREEMPTION OF OTHER LAW.—The provi-  
12 sions of subsection (a) shall be in addition to, and shall  
13 not supersede or preempt, any other provision of law or  
14 any rule or regulation thereunder.

15 (c) DEADLINE FOR RULEMAKING.—The Commission  
16 shall—

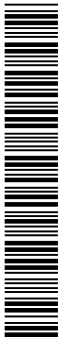
17 (1) within 90 days after the date of enactment  
18 of this Act, propose, and

19 (2) within 270 days after such date, prescribe,  
20 the rules or regulations required by this section.

21 **SEC. 4. REAL-TIME DISCLOSURE OF FINANCIAL INFORMA-**  
22 **TION.**

23 (a) REAL-TIME ISSUER DISCLOSURES REQUIRED.—

24 (1) OBLIGATIONS.—Every issuer of a security  
25 registered under section 12 of the Securities Ex-



1 change Act of 1934 (15 U.S.C. 78l) shall file with  
2 the Commission and disclose to the public, on a  
3 rapid and essentially contemporaneous basis, such  
4 information concerning the financial condition or op-  
5 erations of such issuer as the Commission deter-  
6 mines by rule is necessary in the public interest and  
7 for the protection of investors. Such rule shall—

8 (A) specify the events or circumstances  
9 giving rise to the obligation to disclose or up-  
10 date a disclosure;

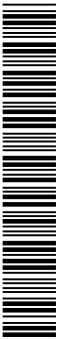
11 (B) establish requirements regarding the  
12 rapidity and timeliness of such disclosure;

13 (C) identify the means whereby the disclo-  
14 sure required shall be made, which shall ensure  
15 the broad, rapid, and accurate dissemination of  
16 the information to the public via electronic or  
17 other communications device;

18 (D) identify the content of the information  
19 to be disclosed; and

20 (E) without limiting the Commission's gen-  
21 eral exemptive authority, specify any exemp-  
22 tions or exceptions from such requirements.

23 (2) ENFORCEMENT.—The Commission shall  
24 have exclusive authority to enforce this section and  
25 any rule or regulation hereunder in civil proceedings.





1 (b) ELECTRONIC DISCLOSURE OF INSIDER TRANS-  
2 ACTIONS.—

3 (1) DISCLOSURES OF TRADING.—The Commis-  
4 sion shall, by rule, require—

5 (A) that a disclosure required by section  
6 16 of the Securities Exchange Act of 1934 (15  
7 U.S.C. 78p) of the sale of any securities of an  
8 issuer, or any security futures product (as de-  
9 fined in section 3(a)(56) of the Securities Ex-  
10 change Act of 1934 (15 U.S.C. 78c(a)(56))) or  
11 any security-based swap agreement (as defined  
12 in section 206B of the Gramm-Leach-Bliley  
13 Act) that is based in whole or in part on the  
14 securities of such issuer, by an officer or direc-  
15 tor of the issuer of those securities, or by a ben-  
16 efcial owner of such securities, shall be made  
17 available electronically to the Commission and  
18 to the issuer by such officer, director, or bene-  
19 ficial owner before the end of the next business  
20 day after the day on which the transaction oc-  
21 curs;

22 (B) that the information in such disclosure  
23 be made available electronically to the public by  
24 the Commission, to the extent permitted under  
25 applicable law, upon receipt, but in no case



1 later than the end of the next business day  
2 after the day on which the disclosure is received  
3 under subparagraph (A); and

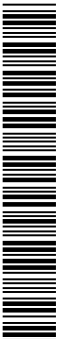
4 (C) that, in any case in which the issuer  
5 maintains a corporate website, such information  
6 shall be made available by such issuer on that  
7 website, before the end of the next business day  
8 after the day on which the disclosure is received  
9 by the Commission under subparagraph (A).

10 (2) TRANSACTIONS INCLUDED.—The rule pre-  
11 scribed under paragraph (1) shall require the disclo-  
12 sure of the following transactions:

13 (A) Direct or indirect sales or other trans-  
14 fers of securities of the issuer (or any interest  
15 therein) to the issuer or an affiliate of the  
16 issuer.

17 (B) Loans or other extensions of credit ex-  
18 tended to an officer, director, or other person  
19 affiliated with the issuer on terms or conditions  
20 not otherwise available to the public.

21 (3) OTHER FORMATS; FORMS.—In the rule pre-  
22 scribed under paragraph (1), the Commission shall  
23 provide that electronic filing and disclosure shall be  
24 in lieu of any other format required for such disclo-  
25 sures on the day before the date of enactment of this

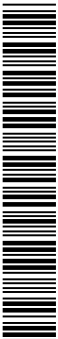


1 subsection. The Commission shall revise such forms  
2 and schedules required to be filed with the Commis-  
3 sion pursuant to paragraph (1) as necessary to fa-  
4 cilitate such electronic filing and disclosure.

5 **SEC. 5. INSIDER TRADES DURING PENSION FUND BLACK-**  
6 **OUT PERIODS PROHIBITED.**

7 (a) PROHIBITION.—It shall be unlawful for any per-  
8 son who is directly or indirectly the beneficial owner of  
9 more than 10 percent of any class of any equity security  
10 (other than an exempted security) which is registered  
11 under section 12 of the Securities Exchange Act of 1934  
12 (15 U.S.C. 78l) or who is a director or an officer of the  
13 issuer of such security, directly or indirectly, to purchase  
14 (or otherwise acquire) or sell (or otherwise transfer) any  
15 equity security of any issuer (other than an exempted se-  
16 curity), during any blackout period with respect to such  
17 equity security.

18 (b) REMEDY.—Any profit realized by such beneficial  
19 owner, director, or officer from any purchase (or other ac-  
20 quisition) or sale (or other transfer) in violation of this  
21 section shall inure to and be recoverable by the issuer irre-  
22 spective of any intention on the part of such beneficial  
23 owner, director, or officer in entering into the transaction.  
24 Suit to recover such profit may be instituted at law or  
25 in equity in any court of competent jurisdiction by the



1 issuer, or by the owner of any security of the issuer in  
2 the name and in behalf of the issuer if the issuer shall  
3 fail or refuse to bring such suit within 60 days after re-  
4 quest or shall fail diligently to prosecute the same there-  
5 after; but no such suit shall be brought more than 2 years  
6 after the date such profit was realized. This subsection  
7 shall not be construed to cover any transaction where such  
8 beneficial owner was not such both at the time of the pur-  
9 chase and sale, or the sale and purchase, of the security  
10 or security-based swap (as defined in section 206B of the  
11 Gramm-Leach-Bliley Act) involved, or any transaction or  
12 transactions which the Commission by rules and regula-  
13 tions may exempt as not comprehended within the pur-  
14 poses of this subsection.

15 (c) RULEMAKING PERMITTED.—The Commission  
16 may issue rules to clarify the application of this sub-  
17 section, to ensure adequate notice to all persons affected  
18 by this subsection, and to prevent evasion thereof.

19 (d) DEFINITION.—For purposes of this section, the  
20 term “beneficial owner” has the meaning provided such  
21 term in rules or regulations issued by the Securities and  
22 Exchange Commission under section 16 of the Securities  
23 Exchange Act of 1934 (15 U.S.C. 78p).



1 **SEC. 6. IMPROVED TRANSPARENCY OF CORPORATE DIS-**  
2 **CLOSURES.**

3 (a) MODIFICATION OF REGULATIONS REQUIRED.—

4 The Commission shall revise its regulations under the se-  
5 curities laws pertaining to the disclosures required in peri-  
6 odic financial reports and registration statements to re-  
7 quire such reports to include adequate and appropriate  
8 disclosure of—

9 (1) the issuer's off-balance sheet transactions  
10 and relationships with unconsolidated entities or  
11 other persons, to the extent they are not disclosed in  
12 the financial statements and are reasonably likely to  
13 materially affect the liquidity or the availability of,  
14 or requirements for, capital resources, or the finan-  
15 cial condition or results of operations of the issuer;  
16 and

17 (2) loans extended to officers, directors, or  
18 other persons affiliated with the issuer on terms or  
19 conditions that are not otherwise available to the  
20 public.

21 (b) DEADLINE FOR RULEMAKING.—The Commission  
22 shall—

23 (1) within 90 days after the date of enactment  
24 of this Act, propose, and

25 (2) within 270 days after such date, prescribe,  
26 the revisions to its regulations required by subsection (a).



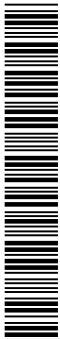
1 (c) ANALYSIS REQUIRED.—

2 (1) TRANSPARENCY, COMPLETENESS, AND USE-  
3 FULNESS OF FINANCIAL STATEMENTS.—The Com-  
4 mission shall conduct an analysis of the extent to  
5 which, consistent with the protection of investors  
6 and the public interest, disclosure of additional or  
7 reorganized information may be required to improve  
8 the transparency, completeness, or usefulness of fi-  
9 nancial statements and other corporate disclosures  
10 filed under the securities laws.

11 (2) ALTERNATIVES TO BE CONSIDERED.—In  
12 conducting the analysis required by paragraph (1),  
13 the Commission shall consider—

14 (A) requiring the identification of the key  
15 accounting principles that are most important  
16 to the issuer's reported financial condition and  
17 results of operation, and that require manage-  
18 ment's most difficult, subjective, or complex  
19 judgments;

20 (B) requiring an explanation, where mate-  
21 rial, of how different available accounting prin-  
22 ciples applied, the judgments made in their ap-  
23 plication, and the likelihood of materially dif-  
24 ferent reported results if different assumptions  
25 or conditions were to prevail;

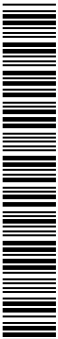


1 (C) in the case of any issuer engaged in  
2 the business of trading non-exchange traded  
3 contracts, requiring an explanation of such  
4 trading activities when such activities require  
5 the issuer to account for contracts at fair value,  
6 but for which a lack of market price quotations  
7 necessitates the use of fair value estimation  
8 techniques;

9 (D) establishing requirements relating to  
10 the presentation of information in clear and un-  
11 derstandable format and language; and

12 (E) requiring such other disclosures, in-  
13 cluded in the financial statements or in other  
14 disclosure by the issuer, as would in the Com-  
15 mission's view improve the transparency of such  
16 issuer's financial statements and other required  
17 corporate disclosures.

18 (3) RULES REQUIRED.—If the Commission, on  
19 the basis of the analysis required by this subsection,  
20 determines that it is necessary in the public interest  
21 or for the protection of investors and would improve  
22 the transparency of issuer financial statements, the  
23 Commission may prescribe rules reflecting the re-  
24 sults of such analysis and the considerations re-  
25 quired by paragraph (2). In prescribing such rules,



1 the Commission may seek to minimize the paper-  
2 work and cost burden on the issuer consistent with  
3 achieving the public interest and investor protection  
4 purposes of such rules.

5 **SEC. 7. IMPROVEMENTS IN REPORTING ON INSIDER**  
6 **TRANSACTIONS AND RELATIONSHIPS.**

7 (a) SPECIFIC OBJECTIVES.—The Commission shall  
8 initiate a proceeding to propose changes in its rules and  
9 regulations with respect to financial reporting to improve  
10 the transparency and clarity of the information available  
11 to investors and to require increased financial disclosure  
12 with respect to the following:

13 (1) INSIDER RELATIONSHIPS AND TRANS-  
14 ACTIONS.—Relationships and transactions—

15 (A) between the issuer, affiliates of the  
16 issuer, and officers, directors, or employees of  
17 the issuer or such affiliates; and

18 (B) between officers, directors, employees,  
19 or affiliates of the issuer and entities that are  
20 not otherwise affiliated with the issuer,

21 to the extent such arrangement or transaction cre-  
22 ates a conflict of interest for such persons. Such dis-  
23 closure shall provide a description of such elements  
24 of the transaction as are necessary for an under-  
25 standing of the business purpose and economic sub-

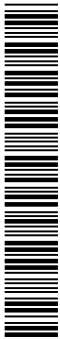




1        stance of such transaction (including contingencies).  
2        The disclosure shall provide sufficient information to  
3        determine the effect on the issuer's financial state-  
4        ments and describe compensation arrangements of  
5        interested parties to such transactions.

6                (2) RELATIONSHIPS WITH PHILANTHROPIC OR-  
7        GANIZATIONS.—Relationships between the registrant  
8        or any executive officer of the registrant and any  
9        not-for-profit organization on whose board a director  
10       or immediate family member serves or of which a di-  
11       rector or immediate family member serves as an offi-  
12       cer or in a similar capacity. Relationships that shall  
13       be disclosed include contributions to the organization  
14       in excess of \$10,000 made by the registrant or any  
15       executive officer in the last five years and any other  
16       activity undertaken by the registrant or any execu-  
17       tive officer that provides a material benefit to the or-  
18       ganization. Material benefit includes lobbying.

19               (3) INSIDER-CONTROLLED AFFILIATES.—Rela-  
20       tionships in which the registrant or any executive of-  
21       ficer exercises significant control over an entity in  
22       which a director or immediate family member owns  
23       an equity interest or to which a director or imme-  
24       diate family member has extended credit. Significant  
25       control should be defined with reference to the con-



tractual and governance arrangements between the  
registrant or executive officer, as the case may be,  
and the entity.

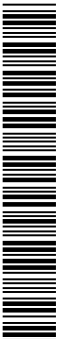
(4) **JOINT OWNERSHIP.**—Joint ownership by a registrant or executive officer and a director or immediate family member of any real or personal property.

8 (5) PROVISION OF SERVICES BY RELATED PER-  
9  
10 SONS.—The provision of any professional services,  
11 including legal, financial advisory or medical serv-  
12 ices, by a director or immediate family member to  
13 any executive officer of the registrant in the last five  
years.

(b) DEADLINES.—The Commission shall complete the rulemaking required by this section within 180 days after the date of enactment of this Act.

17 SEC. 8. ENHANCED OVERSIGHT OF PERIODIC DISCLO-  
18 SURES BY ISSUERS.

(a) REGULAR AND SYSTEMATIC REVIEW.—The Securities and Exchange Commission shall review disclosures made by issuers pursuant to the Securities Exchange Act of 1934 (including reports filed on form 10-K) on a basis that is more regular and systematic than that in practice on the date of enactment on this Act. Such review shall include a review of an issuer’s financial statements.



1 (b) RISK RATING SYSTEM.—For purposes of the re-  
2 views required by subsection (a), the Commission shall es-  
3 tablish a risk rating system whereby issuers receive a risk  
4 rating by the Commission, which shall be used to deter-  
5 mine the frequency of such reviews. In designing such a  
6 risk rating system the Commission shall consider, among  
7 other factors the following:

8 (1) Emerging companies with disparities in  
9 price to earning ratios.

10 (2) Issuers with the largest market capitaliza-  
11 tion.

12 (3) Issuers whose operations significantly im-  
13 pact any material sector of the economy.

14 (4) Systemic factors such as the effect on niche  
15 markets or important subsectors of the economy.

16 (5) Issuers that experience significant volatility  
17 in their stock price as compared to other issuers.

18 (6) Any other factor the Commission may con-  
19 sider relevant.

20 (c) MINIMUM REVIEW PERIOD.—In no event shall an  
21 issuer be reviewed less than once every three years by the  
22 Commission.

23 (d) PROHIBITION OF DISCLOSURE OF RISK RAT-  
24 ING.—Notwithstanding any other provision of law, the



1 Commission shall not disclose the risk rating of any issuer  
2 described in subsection (b).

3 **SEC. 9. RETENTION OF RECORDS.**

4 (a) DUTY TO RETAIN RECORDS.—Any independent  
5 public or certified accountant who certifies a financial  
6 statement as required by the securities laws or any rule  
7 or regulation thereunder shall prepare and maintain for  
8 a period of no less than 7 years, final audit work papers  
9 and other information related to any accountants report  
10 on such financial statements in sufficient detail to support  
11 the opinion or assertion reached in such accountants re-  
12 port. The Commission may prescribe rules specifying the  
13 application and requirements of this section.

14 (b) ACCOUNTANT'S REPORT.—For purposes of sub-  
15 section (a), the term “accountant’s report” means a docu-  
16 ment in which an accountant identifies a financial state-  
17 ment and sets forth his opinion regarding such financial  
18 statement or an assertion that an opinion cannot be ex-  
19 pressed.

20 **SEC. 10. REMOVAL OF UNFIT CORPORATE OFFICERS.**

21 (a) REMOVAL IN JUDICIAL PROCEEDINGS.—

22 (1) SECURITIES ACT OF 1933.—Section 20(e) of  
23 the Securities Act of 1933 (15 U.S.C. 77t(e)) is  
24 amended by striking “substantial unfitness” and in-  
25 serting “unfitness”.



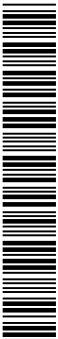
1           (2) SECURITIES EXCHANGE ACT OF 1934.—Sec-  
2           tion 21(d)(2) of the Securities Exchange Act of  
3           1934 (15 U.S.C. 78u(d)(2)) is amended by striking  
4           “substantial unfitness” and inserting “unfitness”.

5           (b) REMOVAL IN ADMINISTRATIVE PROCEEDINGS.—

6           (1) SECURITIES ACT OF 1933.—Section 8A of  
7           the Securities Act of 1933 (15 U.S.C. 77h–1) is  
8           amended by adding at the end the following new  
9           subsection:

10          “(f) AUTHORITY TO PROHIBIT PERSONS FROM  
11          SERVING AS OFFICERS OR DIRECTORS.—In any cease-  
12          and-desist proceeding under subsection (a), the Commis-  
13          sion may issue an order to prohibit, conditionally or un-  
14          conditionally, and permanently or for such period of time  
15          as it shall determine, any person who has violated section  
16          17(a)(1) of this title from acting as an officer or director  
17          of any issuer that has a class of securities registered pur-  
18          suant to section 12 of the Securities Exchange Act of  
19          1934 or that is required to file reports pursuant to section  
20          15(d) of that Act if the person’s conduct demonstrates  
21          unfitness to serve as an officer or director of any such  
22          issuer.”.

23           (2) SECURITIES EXCHANGE ACT OF 1934.—Sec-  
24           tion 21C of the Securities Exchange Act of 1934 (15



1 U.S.C. 78u-3) is amended by adding at the end the  
2 following new subsection:

3 “(f) AUTHORITY TO PROHIBIT PERSONS FROM  
4 SERVING AS OFFICERS OR DIRECTORS.—In any cease-  
5 and-desist proceeding under subsection (a), the Commis-  
6 sion may issue an order to prohibit, conditionally or un-  
7 conditionally, and permanently or for such period of time  
8 as it shall determine, any person who has violated section  
9 10(b) of this title or the rules or regulations thereunder  
10 from acting as an officer or director of any issuer that  
11 has a class of securities registered pursuant to section 12  
12 of this title or that is required to file reports pursuant  
13 to section 15(d) of this title if the person’s conduct dem-  
14 onstrates unfitness to serve as an officer or director of  
15 any such issuer.”.

16 **SEC. 11. DISGORGEMENT REQUIRED.**

17 (a) ADMINISTRATIVE ACTIONS.—Within 30 days  
18 after the date of enactment of this Act, the Securities and  
19 Exchange Commission shall prescribe regulations to re-  
20 quire disgorgement, in a proceeding pursuant to its au-  
21 thority under section 21A, 21B, or 21C (15 U.S.C. 78u-  
22 1, 78u-2, 78u-3), of salaries, commissions, fees, bonuses,  
23 options, profits from securities transactions, and losses  
24 avoided through securities transactions obtained by an of-  
25 ficer or director of an issuer during or for a fiscal year



1 or other reporting period if such officer or director en-  
2 gaged in misconduct resulting in, or made or caused to  
3 be made in, the filing of a financial statement for such  
4 fiscal year or reporting period which—

5 (1) was at the time, and in the light of the cir-  
6 cumstances under which it was made, false or mis-  
7 leading with respect to any material fact; or

8 (2) omitted to state a material fact necessary in  
9 order to make the statements made, in the light of  
10 the circumstances in which they were made, not mis-  
11 leading,

12 (b) JUDICIAL PROCEEDINGS.—Section 21(d) of the  
13 Securities Exchange Act of 1934 (15 U.S.C. 78u(d)) is  
14 amended by adding at the end the following new para-  
15 graph:

16 “(5) ADDITIONAL DISGORGEMENT AUTHOR-  
17 ITY.—In any action or proceeding brought or insti-  
18 tuted by the Commission under the securities laws  
19 against any person—

20 “(A) for engaging in misconduct resulting  
21 in, or making or causing to be made in, the fil-  
22 ing of a financial statement which—

23 “(i) was at the time, and in the light  
24 of the circumstances under which it was



1 made, false or misleading with respect to  
2 any material fact; or

3 “(ii) omitted to state a material fact  
4 necessary in order to make the statements  
5 made, in the light of the circumstances in  
6 which they were made, not misleading; or

7 “(B) for engaging in, causing, or aiding  
8 and abetting any other violation of the securi-  
9 ties laws or the rules and regulations there-  
10 under,

11 such person, in addition to being subject to any  
12 other appropriate order, may be required to disgorge  
13 any or all benefits received from any source in con-  
14 nection with the conduct constituting, causing, or  
15 aiding and abetting the violation, including (but not  
16 limited to) salary, commissions, fees, bonuses, op-  
17 tions, profits from securities transactions, and losses  
18 avoided through securities transactions.”.

19 **SEC. 12. CEO AND CFO ACCOUNTABILITY FOR DISCLOSURE.**

20 (a) **REGULATIONS REQUIRED.**—The Securities and  
21 Exchange Commission shall by rule require, for each com-  
22 pany filing periodic reports under section 13 or 15(d) of  
23 the Securities Exchange Act of 1934 (15 U.S.C. 78m,  
24 78o(d)), that the principal executive officer or officers and  
25 the principal financial officer or officers, or persons per-





1 forming similar functions, certify in each annual or quar-  
2 terly report filed or submitted under either such section  
3 of such Act that—

4 (1) the signing officer has reviewed the report;

5 (2) based on the officer's knowledge, the report  
6 does not contain any untrue statement of a material  
7 fact or omit to state a material fact necessary in  
8 order to make the statements made, in light of the  
9 circumstances under which such statements were  
10 made, not misleading;

11 (3) based on such officer's knowledge, the fi-  
12 nancial statements, and other financial information  
13 included in the report, fairly present in all material  
14 respects the financial condition and results of oper-  
15 ations of the issuer as of, and for, the periods pre-  
16 sented in the report;

17 (4) the signing officers—

18 (A) are responsible for establishing and  
19 maintaining internal controls;

20 (B) have designed such internal controls to  
21 ensure that material information relating to the  
22 issuer and its consolidated subsidiaries is made  
23 known to such officers by others within those  
24 entities, particularly during the period in which  
25 the periodic reports are being prepared;



1 (C) have evaluated the effectiveness of the  
2 issuer's internal controls as of a date within 90  
3 days prior to the report; and

4 (D) have presented in the report their con-  
5 clusions about the effectiveness of their internal  
6 controls based on their evaluation as of that  
7 date;

8 (5) the signing officers have disclosed to the  
9 issuer's auditors and the audit committee of the  
10 board of directors (or persons fulfilling the equiva-  
11 lent function)—

12 (A) all significant deficiencies in the design  
13 or operation of internal controls which could ad-  
14 versely affect the issuer's ability to record, proc-  
15 ess, summarize, and report financial data and  
16 have identified for the issuer's auditors any ma-  
17 terial weaknesses in internal controls; and

18 (B) any fraud, whether or not material,  
19 that involves management or other employees  
20 who have a significant role in the issuer's inter-  
21 nal controls; and

22 (6) the signing officers have indicated in the re-  
23 port whether or not there were significant changes  
24 in internal controls or in other factors that could  
25 significantly affect internal controls subsequent to



1 the date of their evaluation, including any corrective  
2 actions with regard to significant deficiencies and  
3 material weaknesses.

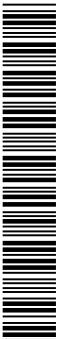
4 (b) DEADLINE.—The rules required by subsection (a)  
5 shall be effective not later than 30 days after the date  
6 of enactment of this Act.

7 **SEC. 13. SECURITIES AND EXCHANGE COMMISSION AU-**  
8 **THORITY TO PROVIDE RELIEF.**

9 (a) PROCEEDS OF ENRON AND ANDERSEN EN-  
10 FORCEMENT ACTIONS.—If in any administrative or judi-  
11 cial proceeding brought by the Securities and Exchange  
12 Commission against—

13 (1) the Enron Corporation, any subsidiary or  
14 affiliate of such Corporation, or any officer, director,  
15 or principal shareholder of such Corporation, sub-  
16 sidiary, or affiliate for any violation of the securities  
17 laws; or

18 (2) Arthur Andersen L.L.C., any subsidiary or  
19 affiliate of Arthur Andersen L.L.C., or any general  
20 or limited partner of Arthur Andersen L.L.C., or  
21 such subsidiary or affiliate, for any violation of the  
22 securities laws with respect to any services per-  
23 formed for or in relation to the Enron Corporation,  
24 any subsidiary or affiliate of such Corporation, or



1 any officer, director, or principal shareholder of such  
2 Corporation, subsidiary, or affiliate;  
3 the Commission obtains an order providing for an account-  
4 ing and disgorgement of funds, such disgorgement fund  
5 (including any addition to such fund required or permitted  
6 under this section) shall be allocated in accordance with  
7 the requirements of this section.

8 (b) PRIORITY FOR FORMER ENRON EMPLOYEES.—  
9 The Commission shall, by order, establish an allocation  
10 system for the disgorgement fund. Such system shall pro-  
11 vide that, in allocating the disgorgement fund amount the  
12 victims of the securities laws violations described in sub-  
13 section (a), the first priority shall be given to individuals  
14 who were employed by the Enron Corporation, or a sub-  
15 sidiary or affiliate of such Corporation, and who were par-  
16 ticipants in an individual account plan established by such  
17 Corporation, subsidiary, or affiliate. Such allocations  
18 among such individuals shall be in proportion to the extent  
19 to which the nonforfeitable accrued benefit of each such  
20 individual under the plan was invested in the securities  
21 of such Corporation, subsidiary, or affiliate.

22 (c) ADDITION OF CIVIL PENALTIES.—If, in any pro-  
23 ceeding described in subsection (a), the Commission as-  
24 sesses and collects any civil penalty, the Commission shall,  
25 notwithstanding section 21(d)(3)(C)(i) or 21A(d)(1) of the



1 Securities Exchange Act of 1934, or any other provision  
2 of the securities laws, be payable to the disgorgement  
3 fund.

4 (d) ACCEPTANCE OF ADDITIONAL DONATIONS.—The  
5 Commission is authorized to accept, hold, administer, and  
6 utilize gifts, bequests and devises of property, both real  
7 and personal, to the United States for the disgorgement  
8 fund. Gifts, bequests, and devises of money and proceeds  
9 from sales of other property received as gifts, bequests,  
10 or devises shall be deposited in the disgorgement fund and  
11 shall be available for allocation in accordance with sub-  
12 section (b).

13 (e) DEFINITIONS.—As used in this section:

14 (1) DISGORGEMENT FUND.—The term  
15 “disgorgement fund” means a disgorgement fund es-  
16 tablished in any administrative or judicial proceeding  
17 described in subsection (a).

18 (2) SUBSIDIARY OR AFFILIATE.—The term  
19 “subsidiary or affiliate” when used in relation to a  
20 person means any entity that controls, is controlled  
21 by, or is under common control with such person.

22 (3) OFFICER, DIRECTOR, OR PRINCIPAL SHARE-  
23 HOLDER.—The term “officer, director, or principal  
24 shareholder” when used in relation to the Enron  
25 Corporation, or any subsidiary or affiliate of such



1 Corporation, means any person that is subject to the  
2 requirements of section 16 of the Securities Ex-  
3 change Act of 1934 (15 U.S.C. 78p) in relation to  
4 the Enron Corporation, or any subsidiary or affiliate  
5 of such Corporation.

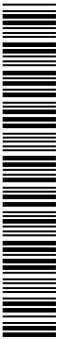
6 (4) NONFORFEITABLE; ACCRUED BENEFIT; IN-  
7 DIVIDUAL ACCOUNT PLAN.—The terms “nonforfeit-  
8 able”, “accrued benefit”, and “individual account  
9 plan” have the meanings provided such terms, re-  
10 spectively, in paragraphs (19), (23), and (34) of sec-  
11 tion 3 of the Employee Retirement Income Security  
12 Act of 1974 (29 U.S.C. 1002(19), (23), (34)).

13 **SEC. 14. AUTHORIZATION OF APPROPRIATIONS OF THE SE-**  
14 **CURITIES AND EXCHANGE COMMISSION.**

15 In addition to any other funds authorized to be ap-  
16 propriated to the Securities and Exchange Commission,  
17 there are authorized to be appropriated to carry out the  
18 functions, powers, and duties of the Commission,  
19 \$776,000,000 for fiscal year 2003, of which—

20 (1) not less than \$134,000,000 shall be avail-  
21 able for the Division of Corporate Finance and for  
22 the Office of Chief Accountant;

23 (2) not less than \$326,000,000 shall be avail-  
24 able for the Division of Enforcement; and



1 (3) not less than \$76,000,000 shall be available  
2 to implement section 8 of the Investor and Capital  
3 Markets Fee Relief Act, relating to pay com-  
4 parability.

5 **SEC. 15. ANALYST CONFLICTS OF INTEREST.**

6 (a) STUDY AND REVIEW REQUIRED.—The Securities  
7 and Exchange Commission shall conduct a study and re-  
8 view of any final rules by any self-regulatory organization  
9 registered with the Commission pursuant to section 19 of  
10 the Securities Exchange Act of 1934 (15 U.S.C. 78s) re-  
11 lated to matters involving equity research analysts con-  
12 flicts of interest. Such study and report shall include a  
13 review of the effectiveness of such final rules in addressing  
14 matters relating to the objectivity and integrity of equity  
15 research analyst reports and recommendations.

16 (b) REPORT REQUIRED.—The Securities and Ex-  
17 change Commission shall submit a report to the Com-  
18 mittee on Financial Services of the House of Representa-  
19 tives and the Committee on Banking, Housing, and Urban  
20 Affairs of the Senate on such study and review no later  
21 than 180 days after any such final rules by any self-regu-  
22 latory organization registered with the Commission pursu-  
23 ant to section 19 of the Securities Exchange Act of 1934  
24 are approved by the Commission. Such report shall include  
25 recommendations to the Congress, including any rec-



1 ommendations for additional self-regulatory organization  
2 rulemaking regarding matters involving equity research  
3 analysts. The Commission shall annually submit an up-  
4 date on such review.

5 (c) ADDITIONAL RULES REQUIRED.—Unless the  
6 final rules reviewed by the Commission under subsections  
7 (a) and (b) contain the following provisions, the Commis-  
8 sion shall, by rule—

9 (1) prohibit equity research analysts from—

10 (A) holding any beneficial interest in any  
11 equity security (as such term is defined in sec-  
12 tion 3(a)(11) of the Securities Exchange Act of  
13 1934 (15 U.S.C. 78c(a)(11)) in any issuer cov-  
14 ered by such analyst; and

15 (B) receiving compensation based on the  
16 investment banking revenues of the firm with  
17 which the analyst is associated, or on the in-  
18 vestment banking revenues of such firm and its  
19 affiliates, except that this prohibition shall not  
20 prohibit such an analyst from receiving com-  
21 pensation based on the overall revenues of such  
22 firm or of such firm and its affiliates;

23 (2) prohibit the investment banking department  
24 of such firm from having any input in the compensa-  
25 tion, hiring, firing, or promotion of analysts; and





1           (3) require such self-regulatory organizations—  
2                 (A) to establish criteria for evaluating ana-  
3           lyst research quality; and  
4                 (B) to require analyst compensation to be  
5           based principally on the quality of the equity re-  
6           search analyst's research.

7   **SEC. 16. INDEPENDENT DIRECTORS.**

8           (a) RULEMAKING REQUIRED.—The Commission shall  
9   adopt rules, effective no later than 6 months after the date  
10   of enactment of this Act, to require that the independent  
11   directors on the board of directors of any issuer of securi-  
12   ties registered under section 12 of the Securities Exchange  
13   Act of 1934 (15 U.S.C. 78l) be nominated for election by  
14   a nominating committee that is composed exclusively of  
15   other independent directors of such issuer.

16          (b) INDEPENDENCE.—The rules required by sub-  
17   section (a) shall require the same degree of independence  
18   for service on the nominating committee of an issuer as  
19   is required for purposes of service on the audit committee  
20   of an issuer by the listing standards concerning corporate  
21   governance of the exchange or association on which the  
22   securities of such issuer are listed.



1 **SEC. 17. ENFORCEMENT OF AUDIT COMMITTEE GOVERN-**  
2 **ANCE PRACTICES.**

3 The Commission shall revise its regulations per-  
4 taining to auditor independence to require that an ac-  
5 countant shall not be considered to be independent for  
6 purposes of certifying the financial statements or other  
7 documents of an issuer required to be filed with the Com-  
8 mission under the securities laws unless—

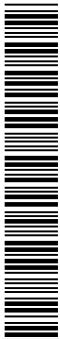
9 (1) an issuer's auditor is appointed by and re-  
10 ports directly to the audit committee of the board of  
11 directors or, in the absence of an audit committee,  
12 the board committee performing equivalent functions  
13 or the entire board of directors;

14 (2) the audit committee meets with the ac-  
15 countants engaged to perform such audit on a reg-  
16 ular basis, at least quarterly; and

17 (3) the audit committee is provided with the op-  
18 portunity to meet with such accountants without the  
19 attendance at such meetings of any officer, director,  
20 or other member of the issuer's senior management.

21 **SEC. 18. REVIEW OF CORPORATE GOVERNANCE PRAC-**  
22 **TICES.**

23 (a) **STUDY OF CORPORATE PRACTICES.**—The Com-  
24 mission shall conduct a study and review of current cor-  
25 porate governance standards and practices to determine  
26 whether such standards and practices are serving the best



1 interests of shareholders. Such study and review shall in-  
2 clude an analysis of—

3 (1) whether current standards and practices  
4 promote full disclosure of relevant information to  
5 shareholders;

6 (2) whether corporate codes of ethics are ade-  
7 quate to protect shareholders, and to what extent  
8 deviations from such codes are tolerated;

9 (3) to what extent conflicts of interests are ag-  
10 gressively reviewed, and whether adequate means for  
11 redressing such conflicts exist;

12 (4) to what extent sufficient legal protections  
13 exist or should be adopted to ensure that any man-  
14 ager who attempts to manipulate or unduly influence  
15 an audit will be subject to appropriate sanction and  
16 liability, including liability to investors or share-  
17 holders pursuing a private cause of action for such  
18 manipulation or undue influence;

19 (5) whether rules, standards, and practices re-  
20 lating to determining whether independent directors  
21 are in fact independent are adequate;

22 (6) whether rules, standards, and practices re-  
23 lating to the independence of directors serving on  
24 audit committees are uniformly applied and ade-  
25 quate to protect investor interests;



1 (7) whether the duties and responsibilities of  
2 audit committees should be established by the Com-  
3 mission; and

4 (8) what further or additional practices or  
5 standards might best protect investors and promote  
6 the interests of shareholders.

7 (b) PARTICIPATION OF STATE REGULATORS.—In  
8 conducting the study required under subsection (a), the  
9 Commission shall seek the views of the securities and cor-  
10 porate regulators of the various States.

11 (c) REPORT REQUIRED.—The Commission shall sub-  
12 mit a report on the analysis required under subsection (a)  
13 as a part of the Commission's next annual report sub-  
14 mitted after the date of enactment of this Act.

15 **SEC. 19. STUDY OF ENFORCEMENT ACTIONS.**

16 (a) STUDY REQUIRED.—The Commission shall re-  
17 view and analyze all enforcement actions by the Commis-  
18 sion involving violations of reporting requirements im-  
19 posed under the securities laws, and restatements of finan-  
20 cial statements, over the last five years to identify areas  
21 of reporting that are most susceptible to fraud, inappro-  
22 priate manipulation, or inappropriate earnings manage-  
23 ment, such as revenue recognition and the accounting  
24 treatment of off-balance sheet special purpose entities.



1 (b) REPORT REQUIRED.—The Commission shall re-  
2 port its findings to the Committee on Financial Services  
3 of the House of Representatives and the Committee on  
4 Banking, Housing, and Urban Affairs of the Senate with-  
5 in 180 days of the date of enactment of this Act and shall  
6 use such findings to revise its rules and regulations, as  
7 necessary. The report shall include a discussion of regu-  
8 latory or legislative steps that are recommended or that  
9 may be necessary to address concerns identified in the  
10 study.

11 **SEC. 20. STUDY OF CREDIT RATING AGENCIES.**

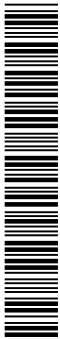
12 (a) STUDY REQUIRED.—The Commission shall con-  
13 duct a study of the role and function of credit rating agen-  
14 cies in the operation of the securities market. Such study  
15 shall examine—

16 (1) the role of the credit rating agencies in the  
17 evaluation of issuers of securities;

18 (2) the importance of that role to investors and  
19 the functioning of the securities markets;

20 (3) any impediments to the accurate appraisal  
21 by credit rating agencies of the financial resources  
22 and risks of issuers of securities;

23 (4) any measures which may be required to im-  
24 prove the dissemination of information concerning



1 such resources and risks when credit rating agencies  
2 announce credit ratings;

3 (5) any barriers to entry into the business of  
4 acting as a credit rating agency, and any measures  
5 needed to remove such barriers; and

6 (6) any conflicts of interest in the operation of  
7 credit rating agencies and measures to prevent such  
8 conflicts or ameliorate the consequences of such con-  
9 flicts.

10 (b) REPORT REQUIRED.—The Commission shall sub-  
11 mit a report on the analysis required by subsection (a)  
12 to the President, the Committee on Financial Services of  
13 the House of Representatives, and the Committee on  
14 Banking, Housing, and Urban Affairs of the Senate with-  
15 in 180 days after the date of enactment of this Act. The  
16 report shall include a discussion of regulatory or legislative  
17 steps that are recommended or that may be necessary to  
18 address concerns identified in the study.

19 **SEC. 21. STUDY OF INVESTMENT BANKS**

20 (a) GAO STUDY.—The Comptroller General shall  
21 conduct a study on whether investment banks and finan-  
22 cial advisors assisted public companies in manipulating  
23 their earnings and obfuscating their true financial condi-  
24 tion. The study should address the role of the investment  
25 banks—



1 (1) in the collapse of the Enron Corporation,  
2 including with respect to the design and implementa-  
3 tion of derivatives transactions, transactions involv-  
4 ing special purpose vehicles, and other financing ar-  
5 rangements that may have had the effect of altering  
6 the company's reported financial statements in ways  
7 that obscured the true financial picture of the com-  
8 pany;

9 (2) in the failure of Global Crossing, including  
10 with respect to transactions involving swaps of fiber  
11 optic cable capacity, in designing transactions that  
12 may have had the effect of altering the company's  
13 reported financial statements in ways that obscured  
14 the true financial picture of the company; and

15 (3) generally, in creating and marketing trans-  
16 actions which may have been designed solely to en-  
17 able companies to manipulate revenue streams, ob-  
18 tain loans, or move liabilities off balance sheets with-  
19 out altering the economic and business risks faced  
20 by the companies or any other mechanism to obscure  
21 a company's financial picture.

22 (b) REPORT.—The General Accounting Office shall  
23 report to the Congress within 180 days after the date of  
24 enactment of this Act on the results of the study required  
25 by this section. The report shall include a discussion of



1 regulatory or legislative steps that are recommended or  
2 that may be necessary to address concerns identified in  
3 the study.

4 **SEC. 22. STUDY OF MODEL RULES FOR ATTORNEYS OF**  
5 **ISSUERS.**

6 (a) IN GENERAL.—The Comptroller General shall  
7 conduct a study of the Model Rules of Professional Con-  
8 duct promulgated by the American Bar Association and  
9 rules of professional conduct applicable to attorneys estab-  
10 lished by the Commission to determine—

11 (1) whether such rules provide sufficient guid-  
12 ance to attorneys representing corporate clients who  
13 are issuers required to file periodic disclosures under  
14 section 13 or 15 of the Securities Exchange Act of  
15 1934 (15 U.S.C. 78m, 78o), as to the ethical re-  
16 sponsibilities of such attorneys to—

17 (A) warn clients of possible fraudulent or  
18 illegal activities of such clients and possible con-  
19 sequences of such activities;

20 (B) disclose such fraudulent or illegal ac-  
21 tivities to appropriate regulatory or law enforce-  
22 ment authorities; and

23 (C) manage potential conflicts of interests  
24 with clients; and





1           (2) whether such rules provide sufficient protec-  
2           tion to corporate shareholders, especially with re-  
3           gards to conflicts of interest between attorneys and  
4           their corporate clients.

5           (b) REPORT REQUIRED.—The Comptroller General  
6           shall report to the Committee on Financial Services of the  
7           House of Representatives and the Committee on Banking,  
8           Housing, and Urban Affairs of the Senate on the results  
9           of the study required by this section. Such report shall  
10          include any recommendations of the General Accounting  
11          Office with regards to—

12           (1) possible changes to the Model Rules and the  
13           rules of professional conduct applicable to attorneys  
14           established by the Commission to provide increased  
15           protection to shareholders;

16           (2) whether restrictions should be imposed to  
17           require that an attorney, having represented a cor-  
18           poration or having been employed by a firm which  
19           represented a corporation, may not be employed as  
20           general counsel to that corporation until a certain  
21           period of time has expired; and

22           (3) regulatory or legislative steps that are rec-  
23           ommended or that may be necessary to address con-  
24           cerns identified in the study.



1 **SEC. 23. ENFORCEMENT AUTHORITY.**

2 For the purposes of enforcing and carrying out this  
3 Act, the Commission shall have all of the authorities  
4 granted to the Commission under the securities laws. Ac-  
5 tions of the Commission under this Act, including actions  
6 on rules or regulations, shall be subject to review in the  
7 same manner as actions under the securities laws.

8 **SEC. 24. EXCLUSION FOR INVESTMENT COMPANIES.**

9 Sections 4, 6, 9, and 15 of this Act shall not apply  
10 to an investment company registered under section 8 of  
11 the Investment Company Act of 1940 (15 U.S.C. 80a-  
12 8).

13 **SEC. 25. DEFINITIONS.**

14 As used in this Act:

15 (1) BLACKOUT PERIOD.—The term “blackout  
16 period” with respect to the equity securities of any  
17 issuer—

18 (A) means any period during which the  
19 ability of at least fifty percent of the partici-  
20 pants or beneficiaries under all applicable indi-  
21 vidual account plans maintained by the issuer  
22 to purchase (or otherwise acquire) or sell (or  
23 otherwise transfer) an interest in any equity of  
24 such issuer is suspended by the issuer or a fidu-  
25 ciary of the plan; but

26 (B) does not include—



1 (i) a period in which the employees of  
2 an issuer may not allocate their interests  
3 in the individual account plan due to an  
4 express investment restriction—

5 (I) incorporated into the indi-  
6 vidual account plan; and

7 (II) timely disclosed to employees  
8 before joining the individual account  
9 plan or as a subsequent amendment  
10 to the plan; or

11 (ii) any suspension described in sub-  
12 paragraph (A) that is imposed solely in  
13 connection with persons becoming partici-  
14 pants or beneficiaries, or ceasing to be par-  
15 ticipants or beneficiaries, in an applicable  
16 individual account plan by reason of a cor-  
17 porate merger, acquisition, divestiture, or  
18 similar transaction.

19 (2) BOARDS OF ACCOUNTANCY OF THE  
20 STATES.—The term “boards of accountancy of the  
21 States” means any organization or association char-  
22 tered or approved under the law of any State with  
23 responsibility for the registration, supervision, or  
24 regulation of accountants.



1 (3) COMMISSION.—The term “Commission”  
2 means the Securities and Exchange Commission.

3 (4) INDIVIDUAL ACCOUNT PLAN.—The term  
4 “individual account plan” has the meaning provided  
5 such term in section 3(34) of the Employee Retirement  
6 Income Security Act of 1974 (29 U.S.C.  
7 1002(34)).

8 (5) ISSUER.—The term “issuer” shall have the  
9 meaning set forth in section 2(a)(4) of the Securities  
10 Act of 1933 (15 U.S.C. 77b(a)(4)).

11 (6) PERSON ASSOCIATED WITH AN ACCOUNT-  
12 ANT.—The term “person associated with an ac-  
13 countant” means any partner, officer, director, or  
14 manager of such accountant (or any person occu-  
15 pying a similar status or performing similar func-  
16 tions), any person directly or indirectly controlling,  
17 controlled by, or under common control with such  
18 accountant, or any employee of such accountant who  
19 performs a supervisory role in the auditing process.

20 (7) PUBLIC REGULATORY ORGANIZATION.—The  
21 term “public regulatory organization” means the  
22 public regulatory organization established by the  
23 Commission under subsection (b) of section 2.

24 (8) SECURITIES LAWS.—The term “securities  
25 laws” means the Securities Act of 1933 (15 U.S.C.



1        77a et seq.), the Securities Exchange Act of 1934  
2        (15 U.S.C. 78a et seq.), the Trust Indenture Act of  
3        1939 (15 U.S.C. 77aaa et seq.), the Investment  
4        Company Act of 1940 (15 U.S.C. 80a-1 et seq.), the  
5        Investment Advisers Act of 1940 (15 U.S.C. 80b et  
6        seq.), and the Securities Investor Protection Act of  
7        1970 (15 U.S.C. 78aaa et seq.), notwithstanding  
8        any contrary provision of any such Act.

